

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-2412

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 74-2412

UNITED STATES OF AMERICA,

vs.

KENNETH OLIVER

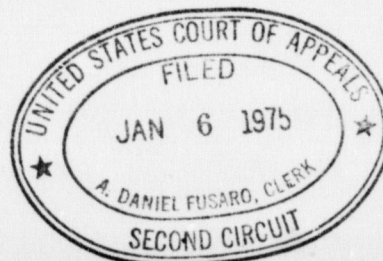
Appellee,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF NEW YORK THE
HONORABLE JOHN T. CURTIN

APPENDIX FOR APPELLANT

DOYLE & DENMAN
George P. Doyle,
Attorney for Appellant
10 Ellicott Square Building
Buffalo, New York 14203



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PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Relevant Docket Entries	A-1
Affidavit of Michigan State Prosecutor	
re: Michigan Proceedings	A-7
Indictment #1972-281	A-10
Indictment #1973-269	A-13
PreTrial Motions	A-16
Decision and Order re: Pre-Trial Motions	A-23
Trial Stipulations	A-27
Judge's Verdict	A-39
Sentencing Transcript	A-59
Judgment and Commitment	A-68
Letter Urging Speedy Trial by Michigan	
Attorney	A-70
PreTrial Motion re: Speedy Trial	A-73
Relevant Excerpts from Suppression	
Hearing Transcript	A-90

APPENDIX FOR DEFENDANT-APPELLANT

APPEAL FROM THE JUDGMENT OF CONVICTION OF THE UNITED STATES
DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW
YORK IN INDICTMENT NO. 1973-269

RELEVANT DOCKET ENTRIES

INDICTMENT NO. 1972-281

1972

December 5 Filed Indictment

1973

March 21 Filed Petition & Order for Writ
of Habeas Corpus Ad Prosequendum,

April 2 Filed Writ of Habeas Corpus
Ad Prosequendum, returned unserved.

July 12 Filed Petition & Order for
Writ of Habeas Corpus Ad Prosequendum

1974

April 29 Oral argument on motion in
cr-1973-269, and 1972-281.

1974 Continued

May	1	Defendant present with counsel, informs Court he desires his own retained counsel.
May	13	Determination of Counsel.
May	20	Determination of Counsel.
July	1	Status Report. All motions made, motion on suppression reserved.
October	25	On motion of the Government., the court dismisses the indictment
October	30	Filed order dismissing indictment.

RELEVANT DOCKET ENTRIES

INDICTMENT NO: 1973-269

1973

July	25	Filed Indictment
July	30	The Court enters a plea of not guilty for the defendant.
July	31	Defendant advises the Court that he will apply for assignment of counsel.
August	2	Filed Order appointing David Gerald Jay, Esq., as counsel for the Defendant.
August	13	Defendant being duly arraigned, enters a plea of not guilty.
August	15	Filed Defendant's Notice of Motion for discovery, inspection, etc. -
August	31	Filed Government's Response to Pre- trial Motions.
October	9	Suppression Hearing.

1974

May	1	Defendant present with counsel, informs Court he desires his own retained counsel.
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1974 Continued

May	13	Determination of Counsel.
May	20	Determination of Counsel
July	10	Filed Decision and Order denying Defendant's motion to suppress statements and evidence seized.
September	10	Government moves case to trial before Judge Curtin, and Jury at Buffalo, N.Y.
September	11	Defendant waives jury trial in open court and consents to trial by the court.
September	26	The Court announced findings of fact and conclusions of law, and found the defendant guilty on all three counts.
October	25	Sentence imposed.
October	25	Filed Clerk's notice of appeal on behalf of defendant on order of Judge John T. Curtin.
October	30	Filed Judgment and Commitment. Commitment issued.
November	21	Original pertinent papers, copy of docket entries, clerk's certificate mailed to CCA.

DOCKET ENTRIES

UNITED STATES MAGISTRATE
EASTERN DISTRICT OF MICHIGAN

Removal Proceedings

1972

July	13	Defendant app. on warr. out of another district (W.D. New York); rep. by counsel, Donald Cutler; r/h set for July 21, 1972 at 9:30 A.M.; bond set at \$30,000 w/10% prov.; def. rem.
July	18	Advised by Mr. Cutler's office that defendant has posted his bond; an adj. date of August 2, 1972 has now been agreed upon for the r/h date.
July	31	Advised by Mr. Bradfield that the rem. hearing is adj. by agreement w/ counsel to Aug. 29, 1972 at 9:30 A.M.; case is expected to go by way of a Rule 20.
August	28	Advised by AUSA Delonis that it is agreeable w/def. counsel to adj. rem. hearing until 9/29/72 at 9:30 A.M.

1972 Continued

September 29 Advised by Mr. Delonis that he and
defendant counsel req. adj. until
10/30/72 for rem. hearing; court grants
adjournment.

October 20 Mot. and Order Dismissing Proceedings
& Cancelling Bond filed.

October 26 Order for return of bond deposit
in \$3,000.00 to Linda Oliver, Check No.
1362, filed and entered.

Thornton, J.

Certified to be a correct transcript of
Docket Entries Dated: October 20, 1972

PAUL J. KOMIVES
United States Magistrate

IN THE DISTRICT COURT OF THE UNITED STATES

For the Western District of New York

THE UNITED STATES OF AMERICA

-VS-

KENNETH EUGENE OLIVER,

Defendant

AFFIDAVIT

Criminal No. 1973-269

COMES NOW Ronald J. Taylor, Prosecutor, Berrien

The Chronological order of the Kenneth Eugene

12 October 1972 - Offense

13 October 1972 - Arrest

14 October 1972 - Arraignment

21 October 1972 - Hearing - St. Joseph, Michigan

25 October 1972 - Hearing - Niles, Michigan

9, 10, 11 & 12 November 1972 - Preliminary Hearing,
Niles, Michigan

15 November 1972 - Request from U.S. Attorney for status of case.

4 December 1972 - Arraignment of Oliver in
Circuit Court

- 22 January 1973 - Defendant's motions to
set bail, suppress evidence, etc. heard,
substitution of attorneys
- 28 February 1973 - Hearing on Defendant's motion
for Forensic Center examination - Defendant
committed to Forensic Center.
- 29 March 1973 - U.S. Attorney agrees to cancel
Writ of Habeas Corpus at our request.
- 11 April 1973 - Competency hearing.
- 19 April 1973 - Defendant's motion for change
of venue, suppress statements, physical
evidence, etc., heard.
- 25 May 1973 - Defendant waives jury trial, case
assigned to a different Judge.
- 5-14 June 1973 - Trial
- 25 June 1973 - Sentencing.

It was necessary under the statutes and court
rules of the State of Michigan to have the defendant in
Court during all motions and other pre-trial proceedings,
in order to expeditiously dispose of this matter in our
jurisdiction, and therefore defendant was at all times
between October 13, 1972 and June 25, 1973 unavailable for

release to Federal authorities for proceedings herein.

FURTHER, the affiant sayeth not.

Dated: 13 August 1973

Ronald J. Taylor

Prosecuting Attorney
Berrien County, Michigan

Subscribed and sworn to before me, a Notary
Public in and for the County of Berrien, this 13th day
of August, 1973.

Marjorie C. King

MARJORIE C. KING, Notary Public
Berrien County, Michigan
My Commission Expires: 10/22/74

INDICTMENT.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

:

NOVEMBER 1972 SESSION

-v-

No. 1972 281

KENNETH E. OLIVER

:

Vio. Title 18, U.S.C.,
§2113

:

FILED 12/5/72

COUNT I

THE GRAND JURY CHARGES:

That on or about the 12th day of July, 1972, in the Western District of New York, the defendant, KENNETH E. OLIVER, wilfully, knowingly and unlawfully, by force and violence and by intimidation, did take from the person and presence of Lynn Otterman and others the sum of \$40,636.14 in money, belonging to and in the care, custody, control, management and possession of the Manufacturers and Traders Trust Company, 2101 Elmwood Avenue, Buffalo, New York, the deposits of which were then insured by the Federal Deposit Insurance Corporation; all in violation of

INDICTMENT

Title 18, United States Code, §2113(a).

COUNT II

THE GRAND JURY FURTHER CHARGES:

That on or about the 12th day of July, 1972, in the Western District of New York, the defendant, KENNETH E. OLIVER, wilfully, knowingly and unlawfully, did take and carry away, with intent to steal and purloin, from the Manufacturers and Traders Trust Company, 2101 Elmwood Avenue, Buffalo, New York, the deposits of which were then insured by the Federal Deposit Insurance Corporation, certain money aggregating \$40,636.14, belonging to said bank and in its custody; all in violation of Title 18, United States Code, §2113(b).

COUNT III

THE GRAND JURY FURTHER CHARGES:

That on or about the 12th day of July, 1972 in the Western District of New York, the defendant, KENNETH E. OLIVER, by force and violence and by intimidation, did take from the person and presence of Lynn Otterman, about

INDICTMENT

\$40,636.14 in money belonging to and in the care, custody, control, management and possession of the Manufacturers and Traders Trust Company, 2101 Elmwood Avenue, Buffalo, New York, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and KENNETH E. OLIVER, in committing the aforesaid offense, did assault one Lynn Otterman and did put in jeopardy the life of the said Lynn Otterman by means and use of a dangerous weapon, that is, a handgun; all in violation of Title 18, United States Code, §2113(d).

A TRUE BILL:

s/ Francis J. Wecherle
Foreman

INDICTMENT.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA	:	MARCH 1973 Session
-vs-		Impaneled July 9, 1973
		No. 1973 269
KENNETH EUGENE OLIVER	:	Vio. T. 18, U.S.C., Section 2113
	:	<u>SUPERSEDING INDICTMENT</u>
	:	FILED <u>7/25/73</u>

COUNT I

THE GRAND JURY CHARGES:

That on or about the 12th day of July, 1972, in the Western District of New York, the defendant, KENNETH EUGENE OLIVER, willfully, knowingly and unlawfully, by force and violence and by intimidation, did take from the person and presence of Donald E. Warren and others approximately \$40,636.14 in money, belonging to and in the care, custody, control, management and possession of

INDICTMENT.

the Manufacturers and Traders Trust Company, 2101 Elmwood Avenue, Buffalo, New York, the deposits of which were then insured by the Federal Deposit Insurance Corporation; all in violation of Title 18, United States Code, §2113(a).

COUNT II

THE GRAND JURY FURTHER CHARGES:

That on or about the 12th day of July, 1972, in the Western District of New York, the defendant, KENNETH EUGENE OLIVER, willfully, knowingly and unlawfully, did take and carry away, with intent to steal and purloin, from the Manufacturers and Traders Trust Company, 2101 Elmwood Avenue, Buffalo, New York, the deposits of which were then insured by the Federal Deposit Insurance Corporation, certain money aggregating approximately \$40,636.14, belonging to said bank and in its custody; all in violation of Title 18, United States Code, §2113(b).

COUNT III

THE GRAND JURY FURTHER CHARGES:

That on or about the 12th day of July, 1972, in the Western District of New York, the defendant, KENNETH

INDICTMENT.

EUGENE OLIVER, by force and violence and by intimidation, did take from the person and presence of Donald E. Warren, approximately \$40,636.14 in money belonging to and in the care, custody, control, management and possession of the Manufacturers and Traders Trust Company, 2101 Elmwood Avenue, Buffalo, New York, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and KENNETH EUGENE OLIVER, in committing the aforesaid offense, did assault one Donald E. Warren and put in jeopardy the life of the said Donald E. Warren by means and use of a dangerous weapon, that is, a handgun; all in violation of Title 18, United States Code, §2113(d).

A TRUE BILL:

s/ Anna Cooper
Deputy Foreman

2
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

MOTION

-VS-

Criminal 1973-269

KENNETH EUGENE OLIVER

SIR:

PLEASE TAKE NOTICE that upon the affidavit of DAVID GERALD JAY, sworn to the 14th day of August, 1973, the indictment herein, the superceded indictment, No. 1972-281, and upon all the papers and prior proceedings had herein, Motions will be made at a Term of this Court to be held at the United States Court House in the City of Buffalo, New York, Part I thereof, on the 4th day of September, 1973, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order granting the following relief:

1. Discovery and inspection of any and all statements whether written or oral, at any time given by the Defendant, pursuant to Federal Rules, Criminal Procedure 16(a).

2. Discovery and inspection of any property seized from the Defendant on or about the 13th day of July, 1972,

or thereafter, by police agencies of the City of Detroit, County of Wayne, State of Michigan or Federal authorities. Rule 16(b).

3. Granting a hearing as to the admissibility of any such statements at the trial of the action in chief.

4. Granting a hearing as to the admissibility of any items of tangible property seized at the time of the arrest or thereafter.

5. Granting discovery and inspection of any and all surveillance photographs taken in the bank in question at the time of the alleged robbery. Rule 16(b).

6. Granting inspection of the Minutes of the two Grand Juries which heard this case.

7. Granting a dismissal of the indictment, for the failure of the Government to act promptly, thus denying the Defendant his right to a speedy trial. Rule 48.

8. Requiring the Government to advise the Court why the prior indictment was never filed with the Clerk of the Court.

9. Requiring the Government to permit discovery and inspection of all books, records, documents and other physical evidence, which the Government has heretofore

used in the Grand Jury proceedings, or intends to use upon the trial of this indictment. Rule 16.

10. Requiring the Government to turn over to Defendant any and all records, documents or information which should be turned over to defense under the doctrine of Brady v. Maryland which tends to negate the guilt of this Defendant.

11. Requiring that a hearing be held to determine whether or not any of the Government's information relative to this indictment was acquired either directly or indirectly through any Governmental agency wire-tap or eavesdropping.

12. Requiring that the Government furnish the Defendant with copies of all photographs used by the Government in any manner whatsoever, either in the investigation of the subject matter contained in this indictment or in the Grand Jury proceedings heretofore had.

13. Requiring that a hearing be held, pursuant to United States v. Wade, to determine if the Defendant was exhibited to any potential eye-witnesses in such a way as to violate his right to counsel or due process of law, or in the alternative, requiring that an Order be made suppressing all such eye-witness testimony from use at the trial.

14. Directing the Government to state whether or not either a search warrant or arrest warrant were procured prior to the arrest of the Defendant.

15. Directing the Government to state the whereabouts of Defendant from the date of his arrest to present, in whose custody he has been, if any, and the time periods thereof.

16. Defendant reserves the right to make further appropriate Motions in the discretion of the Court.

Dated: Buffalo, New York
August 14, 1973.

Yours Etc.,

DAVID GERALD JAY
Attorney for Defendant
1730 Liberty Bank Building
Buffalo, New York 14202
Tel: 853-2440

TO: JOHN T. ELFVIN, ESQ.
United States Attorney
Western District of New York
502 United States Court House
Buffalo, New York 14202

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

AFFIDAVIT

KENNETH EUGENE OLIVER

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:
CITY OF BUFFALO)

DAVID GERALD JAY, being duly sworn, deposes
and says:

1. I am the attorney for the Defendant above-named, having been assigned by Order of this Court, and am admitted to practice before the United States District Court, Western District of New York, the Second Circuit Court of Appeals and the United States Supreme Court.

2. The alleged crime which is the subject of this indictment occurred on July 12, 1972.

3. On December 5, 1972, Indictment No. 1972-281 was returned by the November, 1972 session of the Federal Grand Jury for this District.

4. Thereafter, and on or about the 25th day of July, 1973, a superceding indictment No. 1973-269 was filed by the March, 1973 session of the Federal Grand Jury for this district.

5. Defendant was arrested in Detroit, Michigan on or about the 13th day of July, 1972.

6. At the time of his arrest, no arrest warrant nor search warrant were displayed to him upon his request and a total search of his home was conducted over his objections and without his consent, said search revealing many items of personal property which were seized, including six properly registered hand guns, for which Defendant then held a permit, walkie-talkies, a telephone bill and other paraphernalia.

7. That Deponent has requested a search of the Clerk's office, which indicates that Indictment No. 1972-281 was never filed with the Clerk.

8. That since July 13, 1973, the Defendant has been ready to proceed to his arraignment and trial but since his initial arrest on July 13, 1972, he has not been arraigned on this charge until Monday, August 13, 1973.

9. That by reason thereof, Defendant has been deprived of his right to a speedy trial, in violation of Federal Rules of Criminal Procedure, Rule 48.

10. Certain statements are alleged to have been made by the Defendant at times subsequent to July 13, 1972, which statements were made under duress and under great emotional strain. It is submitted that such state-

ments should not be admissible on the trial hereof and that a hearing is required to determine the voluntariness of such statements.

11. Furthermore, a hearing is required to determine the admissibility of certain items seized from Defendant's home at the time of his arrest or thereafter.

WHEREFORE, Deponent respectfully requests that the Court grant the relief requested in the Notice of Motion hereto annexed.

David Gerald Jay

Sworn to before me this
14th day of August, 1973.

JO ANN METZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

vs.

CR. 1973-269

KENNETH EUGENE OLIVER,

Defendant

APPEARANCES: JOHN T. ELFVIN, ESQ.
United States Attorney
(THEODORE J. BURNS, ESQ., of Counsel)
Buffalo, New York, for the Government.

GEORGE P. DOYLE, ESQ.
Buffalo, New York, for the Defendant.

The defendant has been indicted in a three-count indictment for the larceny and robbery of the Manufacturers and Traders Trust Company in Buffalo, New York on July 12, 1972. On October 9, 1973 a suppression hearing was held before the Honorable John O. Henderson. At the time of his death in February of 1974, this matter was transferred to my calendar. Shortly after that the defendant informed the court that he desired to retain his own lawyer to represent him in this litigation. Because he was incarcerated in the Erie County Holding

Center, arrangements to obtain counsel were drawn out and somewhat difficult. It was not until June 1, 1974 that the court signed an order relieving the assigned counsel of responsibility and noting the appearance of his present retained counsel, who has now informed the court that he has examined the transcript of the hearing and does not desire to file a memorandum in support of the motion to suppress.

The court has reviewed the record of the October 9, 1973 hearing. The following constitutes the findings of fact and conclusions of law.

On July 12, 1972 the Detroit Field Office of the Federal Bureau of Investigation received a report from their Buffalo office that a Buffalo bank had been robbed by a male Negro about six feet tall, weighing 235 pounds. The license plate number at the scene was traced to a registration of a Linda Oliver of 1042 Stafford Place, Detroit. When F.B.I. agents went to the Stafford Place address on July 13, they were met by a lady who identified herself as Linda Oliver. The agents explained the purpose of their visit but, when they asked to talk to her husband, she said that he was not at home. However, she gave the

agents permission to search the vehicle. This search revealed \$1,055 in currency wrapped in Manufacturers and Traders Trust Company, Buffalo, New York wrappers. When they returned to the house, Mrs. Oliver said that her husband was home. A short time later the defendant surrendered himself, was placed under arrest and handcuffed. After the agents informed him of his Miranda rights, Oliver said that he understood them and wanted to cooperate. He made a number of admissions to the agents and, most importantly, told them that he robbed the Manufacturers and Traders Trust Company in Buffalo the previous day. Previously Mrs. Oliver had given her consent to search the house. The agents found an attache case in the basement in which there was about \$35,000, and Oliver told them that the weapon used was on a shelf in the garage.

From the circumstances, the court finds that Mrs. Oliver consented to the search of the vehicle and of her residence, that the defendant was fully and completely advised of his rights and he voluntarily, with full knowledge of them, freely cooperated with the government agents investigating the robbery. The items seized by the

agents were either in plain view or they were seized after proper consent given by Mrs. Oliver or the defendant. The motion of the defendant to suppress the statements and the evidence seized is denied.

So ordered.

John T. Curtin

JOHN T. CURTIN
United States District Judge

DATED: July 10, 1974

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

CR. 1973-269

-vs-

S T I P U L A T I O N

KENNETH EUGENE OLIVER,

Defendant

IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN the defendant herein, KENNETH EUGENE OLIVER, with his attorney, George P. Doyle, and the United States Attorney for the Western District of New York, John T. Elfvin, Theodore J. Burns, Assistant United States Attorney, of counsel, that if Richard S. Farley, Lawrence Bonney, and Dudley Hodgson were called to testify in the trial of the case of The United States of America v. Kenneth Eugene Oliver, their testimony would be as it appears in the transcript of proceedings held before the Honorable John O. Henderson, United States District Judge in and for the Western District of New York, at Buffalo, New York, on Monday, October 9, 1973, and further identified as Government Exhibits 51, as redacted.

IT IS FURTHER STIPULATED AND AGREED BY AND BETWEEN the aforementioned parties that if said persons were called to testify in the trial of this case, they would testify additionally as follows:

1. Richard S. Farley, Detroit Field Office, Federal Bureau of Investigation, Detroit, Michigan.

From my initials placed on the bag, I can identify Government Exhibit #16 as the \$1,055.00 in currency removed from the glove compartment of the 1970 Chevrolet Camaro at 1042 Stafford Place, Detroit, Michigan, on July 13, 1972. The two money wrappers marked as Government Exhibits #17 and #18 were also recovered at that time from the glove compartment and bear my initials.

Government Exhibit #20 is currency in the amount of \$4,518.00 recovered from the room where KENNETH OLIVER was arrested on July 13, 1972 and identified by my initials on the wrapping.

Government Exhibit #21 is a Buffalo street map cover, found on the dresser in the room in which

KENNETH OLIVER was arrested at 1042 Stafford Place. My initials are on the exhibit.

Government Exhibit #22 is the black attache case found in the basement of the home at 1042 Stafford Place. Contained therein at the time I found the attache case were Government Exhibits #24, a Manufacturers and Traders Trust Company bank envelope, and Government Exhibits #25 through 30, M & T bank deposit receipts, all of which were initialed by me at the time I seized them.

Also contained in the attache case was \$30,546.09, which is identified by my initials on the wrapping. Government Exhibit #23 is the \$30,546.09 recovered from the attache case.

I have examined Government Exhibit #2, and the serial numbers of the Federal Reserve Notes contained thereon. I have also examined the serial numbers on the Federal Reserve Notes which were found in the attache case and have been marked as Government Exhibit #23. The serial numbers contained on Government Exhibit #2 are identical with the serial numbers found on twenty different

ten dollar Federal Reserve Notes which are among the currency identified as Government Exhibit #23.

Government Exhibits #34 (one black suitcoat), and #35 (one pair of black trousers) were recovered by Special Agent John Callahan from a first floor bathroom at 1042 Stafford Avenue and brought to me where I tagged the exhibits and placed my initials on the tag.

Government Exhibit #36 (one pair of black boots) were recovered by me from an upstairs bedroom closet.

Government Exhibit #38 is one white plastic bag which was recovered at the foot of the bed in the room in which KENNETH OLIVER was placed under arrest. Contained in Government Exhibit #38 at the time I seized it were the following items:

- Government Exhibit #39 - One Buffalo street map
- Government Exhibit #40 - One black wig
- Government Exhibit #41 - One fake beard
- Government Exhibit #42 - One fake moustache
- Government Exhibit #43 - One New York State road map
- Government Exhibit #45 - One Maple Leaf Motor Lodge Motel receipt

Government Exhibit #46 - One \$600 loan receipt
Government Exhibit #47 - One \$500 deposit receipt
Government Exhibit #48 - \$463.46 receipt for
payment - (Michigan Bell
Telephone Co.)

Government Exhibit #31 is \$159.00 recovered
from KENNETH OLIVER'S wallet while on the first floor
of the house at 1042 Stafford Place.

2. Lawrence A. Bonney, 1932 Brookshire Avenue,
Pustin, California.

Government Exhibit #19 is the "Consent to
Search" prepared by me and signed in my presence by
Linda Oliver on July 13, 1972 at 1042 Stafford Place,
Detroit, Michigan.

Government Exhibit #49 is the Advice of
Rights form which Special Agent Dudley Hodgson read to
KENNETH OLIVER at the Detroit Field Office of the
Federal Bureau of Investigation on July 13, 1972.

3. Dudley Hodgson, Baltimore Field Office,
Federal Bureau of Investigation, Baltimore, Maryland.

Government Exhibit #50 is the .45 caliber automatic handgun which I recovered from a shelf in the garage at 1042 Stafford Place, Detroit, Michigan on July 13, 1972. It was unloaded at that time, although it contained a clip.

Dated: Buffalo, New York, September 12, 1974

JOHN T. ELFVIN
United States Attorney in and for
the Western District of New York
Office and P.O. Address
502 U.S. Courthouse
Buffalo, New York 14202

By: THEODORE J. BURNS
Assistant United States Attorney,
of Counsel

GEORGE P. DOYLE
Attorney for Defendant
Office and P.O. Address
10 Ellicott Square Building
Buffalo, New York 14203

KENNETH EUGENE OLIVER, Defendant

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-vs-

KENNETH EUGENE OLIVER,

Defendant

:
: CR. 1973-269
:
: S T I P U L A T I O N

IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN the defendant herein, KENNETH EUGENE OLIVER, with his attorney George P. Doyle, and the United States Attorney for the Western District of New York, John T. Elfvin, Theodore J. Burns, Assistant United States Attorney, that if the following witnesses were called to testify in the trial of the case of the United States of America v. Kenneth Eugene Oliver, their testimony would be as follows:

1. Lynn Otterman, 39 Copper Heights, Snyder, New York.

During the summer of 1972 I was employed by the Manufacturers and Traders Trust Company, Buffalo, New York as a summer intern. On July 12, 1972, I was assigned to the North Elmwood, Manufacturers and Traders

Trust Company Office, at 2101 Elmwood Avenue, Buffalo, New York. While driving to work that morning in a westerly direction on Kenmore Avenue near Colvin, I noticed a Negro male in a Camaro automobile behind me. When I made a left-hand turn onto Elmwood Avenue, that car also made a left turn behind me. After several hundred yards, I then turned left into the Twin Fair - Manufacturers and Traders Trust Company parking lot, just off Elmwood Avenue. The Camaro automobile also turned into that parking lot. As I parked my car next to the bank, I noticed the Camaro pulling up to my car and parking next to it on the left side. As I got out of my car, I saw the man in the gray Camaro with a gun in his hand, pointed at me. He told me to get into his car and I did. He then drove behind the Harvest supermarket, steering with one hand and holding the gun pointed at me with the other. He asked me a number of questions about the security of the M & T Bank, North Elmwood office and about how much money was maintained in the bank. He called me by name and also mentioned the names of other employees of the bank. He also said, "I don't want to hurt or

kill anyone". He then drove back to the parking area next to the bank where he told me to get out of the car with his black attache case and enter the bank. He also got out of the car. I walked through the first, unlocked door and then knocked on the second, locked door where Barbara Buchwald, another employee, came to let me in. The bank was not yet open to the public for business. When Barbara Buchwald opened the door, the male individual then appeared behind me and pushed open the door. He then went over to the desk of Donald E. Warren, the bank manager and told everybody in the bank to get into the vault. At all times inside the bank that I observed, he had the gun in his hand pointed at the bank personnel. Once inside the vault, he told the employees to open the doors in the vault, take the money out and put it into his attache case. He also had a white cloth bag with him which had been in the attache case. Some paper money was in that bag also. He then told all the bank personnel to face the back of the vault and said, "I know where you live. I will be seeing you". He closed the door and left.

This man was a Negro male, in his mid-30's, about 5 ft. 10 in., with a heavy build. He had straight, medium-length black hair. He appeared to be wearing a fake plastic beard. His complexion was very dark. The automobile he drove was a Chevrolet Camaro, beige or light tan in color with a black vinyl top.

2. Donald E. Warren, 570 Meadowbrook Drive, North Tonawanda, New York.

On July 12, 1972, I was the manager of the North Elmwood office, Manufacturers & Traders Trust Company, located at 2101 Elmwood Avenue in Buffalo, New York. Shortly before 9:00 A.M. on that date, prior to the opening of the bank to the public at 9:30 A.M., I looked up from my desk and saw a Negro male standing in the doorway of my office, pointing a .45 caliber automatic handgun at me. I am an officer in the United States Army Reserves, and am familiar with this weapon, inasmuch as I am required to fire a .45 caliber automatic every year and have done so for the past five years. The man said, "Okay, Don, let's go", and motioned towards the bank vault. He

was carrying a large black attache case. On the way towards the vault, he told several bank employees then in the lobby area to get into the vault also. While in the vault, he said to me "You better hurry up, or your wife's going to be a widow". I and other employees unlocked several drawers and emptied the money into his black attache case and into a white bag which he had pulled out of the attache case. At one point, in the vault, the man said, "Hurry up, you are moving too fuckin' slow". He also addressed several employees by name, including Mary Carlucci, Norma Roberts, and me. While I and other employees were removing the money from the drawers, he held the .45 caliber automatic handgun in his hand at all times. The man told us all to face the back of the vault, exited from the vault, and locked the grille gate behind him. Approximately two minutes later, I unlocked the door and left the vault, and called the authorities.

Government Exhibit #2 is a bait currency record for Teller Grace Verdi. Government Exhibit #3 is a bait currency record of Teller Barbara L. Buchwald. As the Bank Manager and Assistant Treasurer, I am

familiar with the preparation of these records by the bank. Each is a record of certain Federal Reserve Notes, identified by serial numbers, placed in the custody of the named teller. After each teller checks the serial numbers against what she actually has in her custody, she places her signature on the bait currency record. These exhibits were prepared at the time the notes were placed in the custody of the named teller. Each exhibit was prepared in the ordinary course of the bank's business, and it is the ordinary course of the bank's business to prepare such records. The currency referred to in the exhibits does not circulate and is not given to the bank customers. It is supposed to remain in the custody of that teller and not circulate.

JUDGE'S VERDICT

September 26, 1974

Transcript p.106 line 5 through p.121 line 8

(106) THE COURT: We are here this morning in the case of United States against Kenneth Oliver. Counsel are present. Mr. Oliver is here. We had the trial last week and there was a delay in meeting again. I believe we were scheduled to meet, - was it Monday afternoon, Mr. Doyle?

MR. DOYLE: I think it was a Monday afternoon schedule.

THE COURT: Monday afternoon, this week, the 23rd, and unfortunately because of illness of defense counsel and the press of other business, - Mr. Doyle was directed by the Court in the State Court to be present to select a jury in an important case, - we had to delay the decision in this case.

(107)

I have heard the oral argument. I have considered all the exhibits and, Mr. Doyle, and Mr. Burns, is there anything further either side desires to call to my attention before the Court renders its decision in this case?

MR. BURNS:

I have nothing, your Honor.

THE COURT:

Mr. Doyle.

MR. DOYLE:

The only thing, your Honor mentioned you had listened to the oral arguments and the exhibits. I wanted to also respectfully call to the Court's mind we also submitted a memorandum.

THE COURT:

I want to assure you, Mr. Doyle, I did consider the written memorandums which you filed and which Mr. Burns filed.

In this case the defendant Kenneth Oliver is charged in three counts, bank larceny, robbery and the robbery by force. That is, the use of a weapon, and the basic

(108)

document in all these cases certainly is the indictment which the first count in summary fashion charges larceny on the 12th of July, 1972; that Mr. Oliver willfully by, - I am sorry, - charges willfully by force and violence took the sum of some \$40,000 from Donald Warren who was an employee of the Manufacturers and Traders Trust Company, and that the deposits were insured by the Federal Deposit Insurance Corporation.

Count two, that on the same day he did willfully steal the amount from the same bank, and count three, that by force and violence did take from the person of Donald Warren the sum of some \$40,000, and in doing so did assault Mr. Warren and put his life in jeopardy because he used a dangerous weapon; that is, a handgun.

In this case after a jury was selected the parties agreed to waive the jury and agreed to proceed to a bench trial and the record of these proceedings is now part of the court record in this case. In open court the defendant and all of the attorneys waived the right to a jury trial and this waiver was approved by the Court.

As I understand it, Mr. Doyle, before the waiver was signed there was detailed discussion with your client, with Mr. Oliver about the right to a jury trial and what effect this would have one way or the other and of the advantages and disadvantages which might come to the defendant by waiving his right to a jury trial and the Court was satisfied under the circumstances that the waiver was knowingly and intelligently

(109)

and willfully made.

After the waiver of jury trial was approved by the Court the parties then entered into certain stipulations and in lieu of witnesses the Court has considered these stipulations to be the record in the case in lieu of live witnesses. The stipulations were spread on the record and make up the trial proceedings in this case.

The parties have stipulated that stipulation 1 and 2 and the exhibits referred to in these stipulations and the proceedings on the motion to suppress held before Judge Henderson on October 9, 1973 may be considered except as to those parts of the proceeding before Judge Henderson which the Court, after hearing argument of counsel, specifically

(110)

ruled should not be considered.

All other matters will be considered as the trial record in this case.

Following this trial by stipulation, the Court had closing arguments from the attorneys and has considered the written memoranda submitted by both sides and has examined the exhibits here entered into evidence, in this case, and the following will now constitute the Court's finding of fact and conclusion of law:

On July 12, 1972, the North Elmwood Branch of the Manufacturers and Traders Trust Company at 2101 Elmwood Avenue in Buffalo, New York, was a bank whose deposits were insured by the Federal Deposit Insurance Corporation.

On the morning of that day an employee of the bank, Lynn Otterman

(111)

was approached by an individual Negro male about thirty-five years of age who was driving a Camaro automobile as she was going to work in the morning and as she came into the parking lot in her car. The man was about five feet ten, heavy build, appeared to be wearing a plastic beard and a mustache. The car he was driving was beige or a light tan with a black vinyl top.

This individual pointed a gun at Miss Otterman and directed her to enter the bank with him. As the two entered the bank the man went to the desk of Donald Warren, the bank manager, and at the same time told everybody in the bank to get into the vault.

When Warren looked up he saw a Negro male point a .45 caliber automatic at him. Mr. Warren was

familiar with weapons because he had been in the reserves a number of years and had fired a .45 on a number of occasions. At gunpoint the man in urging Warren to hurry to the money vault said to him "You better hurry up or your wife is going to be a widow".

Warren and the other employees at the urging of this individual unlocked several drawers and emptied the money into a black attache case which the man had in a white bag which he also carried.

(112)

The man with the gun called several of the employees in the bank by name.

After stuffing the money into the satchel he left the bank.

Later a strike made by an auditor of the M&T indicated a shortage of \$40,636.14. Included in this amount which the man picked up was certain bait money which had been in the drawers of

several of the tellers and a list of these notes was entered into evidence in this case.

The day before the robbery occurred a lady who lived in the vicinity of Blackstone and Treadwell Street, which was about six doors from the home of Donald Warren who was the officer in the bank, noticed a large Negro male sitting in an automobile near her home with a Michigan plate number LGX-642. The car remained there for about an hour and then came back later in the day.

The assistant manager of a Twin Fair Store located in the same plaza as the bank noticed a silver-gray 1970 Camaro, Michigan plate LGX-642 parked about one hundred fifty yards from the bank one morning early in July, 1972, and by later count this was several days before the day

(113)

robbery occurred. The car remained in the lot for about two hours and from time to time this man noticed that there was an individual in the car.

The records of the Maple Leaf Motor Lodge on Niagara Falls Boulevard, Amherst, New York, which was several miles from the bank, indicated that a man who identified himself as Kenneth Oliver, driving a Chevrolet with a Michigan plate stayed at the motel from July 6, 1972 through July 12, 1972.

The records of the Department of Motor Vehicles of the State of Michigan show that a 1972 license LGX-642, that the vehicle was owned by Linda C. Oliver of 1042 Stafford Place in Detroit, Michigan.

Soon after the robbery the information about the description of the individual and the automobile

(114)

were relayed to the FBI and an agent in the Detroit office proceeded to this address. That is, 1042 Stafford Place in Detroit, Michigan in the late afternoon of the 12th looking for the vehicle. They did not see it there at the time and they returned on the following morning. That is, the morning of the 13th, the day after the robbery. The vehicle was not there. They went to the door and knocked and a lady answered and identified herself as Linda Oliver. She told the agents her husband was not home but the car was in the garage.

Mrs. Oliver was asked if she would give a consent to search the vehicle and she gave this consent to the agents. When the agents went to the garage they discovered

there was a Camaro there with license plate LGX-642. A search of the car revealed \$1,055 in currency wrapped in Manufacturers and Traders Trust Company wrappers in the glove compartment.

After the agents returned to the house and after further conversation with Mrs. Oliver she admitted that her husband was home. As the agents ascended the staircase upstairs, it appeared to them that they heard the cocking of a gun and they called up and identified themselves as FBI agents and explained that they were there to arrest Mr. Oliver for the bank robbery and after this the defendant surrendered to the agents. They proceeded upstairs to the bedroom where Mr. Oliver was and they explained his rights to him and the Court is satisfied after reading

(115)

the transcript of the hearing before Judge Henderson that his rights under Miranda and under the statutes as now set out in the code were fully and completely explained to him. He told the agents he understood what they were talking about and that he understood what his rights were.

The agents in an immediate search after discussing with him the bank robbery, Mr. Oliver cooperated freely with the agents in telling them where the money was to be found. They found a gun in the closet of the bedroom but this was not the gun used in the robbery.

There was some money next to the bed in the bedroom where Mr. Oliver was located when the agents came in. He told the

(116)

agents he committed the robbery because he was in financial trouble and he needed the money in his business.

He voluntarily told the agents where they could find other money in the house.

There was a Buffalo street map located near the bed upon which the location of the house of Donald Warren and other points in Buffalo were circled. On another sheet he had the names and addresses of a number of the tellers of the branch bank written on the sheet. Currency on the top of the dresser amounted to \$4,058.

Mr. Oliver led the agents to the basement where they found the attache case with more money inside. The total sum in all, counting up all the money amounted to about \$30,000. They did not find any

additional money wrappers but there were deposit slips with the Manufacturers and Traders Trust Company printed on the, - the legend M&T Trust Company printed on them found in the attache case.

(117)

In a white plastic bag Mr. Oliver showed them his false mustache and other articles he used in his disguise. He told the agents that the .45 used in the robbery was in the garage.

In an order of July 10, 1974, I previously held, and after I considered the record of the suppression hearing, that Mrs. Oliver voluntarily consented to the search of the vehicle and the house and that after Mr. Oliver was advised of his Constitutional rights, he understood them and freely cooperated with the

Government agents, giving them information about the robbery and the location of the loot and the evidence in the house.

After hearing the further evidence at the trial I adhere to my prior ruling.

It is true that there was no eye witness identification of the defendant by any of the bank employees. Nevertheless, the evidence pointing to his guilt beyond a reasonable doubt is overwhelming.

The general description of the man at the bank as to color, weight, build and so forth matches the features of the defendant Kenneth Oliver. A man with the same name and address registered in a motel not too far from the bank for a six-day period, during the period of time when the bank was held up.

(118)

The vehicle belonging to Mrs. Oliver with the same plate was observed by business people and others in the area with the man generally described as appearing like Mr. Oliver.

The day after the robbery the agents found a large amount of cash along with money wrappers and deposit slips of the Manufacturers and Traders Trust Company in defendant's home. Also a map of the Buffalo area with the bank and some of the homes of the employees circled and the names and addresses of many of the employees written on a slip which the defendant had in his bedroom.

In addition to all of this after advisement of his rights the defendant freely admitted robbing the bank not only sufficient for

(119)

the record to convict the defendant of larceny, but also the robbery count, count one, but also the charge of the use of a weapon against Donald Warren as well.

There is an inference that the gun used during the robbery was loaded and the act of threatening Donald Warren with a .45 is equivalent to saying the gun is loaded and the wielder will shoot unless his commands are obeyed.

The actions which were in evidence here before the Court clearly indicate that the defendant intended to place the employees of the bank in fear and as far as Mr. Warren is concerned, intended to put him in jeopardy of his life unless he followed the commands of the robber and the Court is satisfied beyond a reasonable doubt

that the individual in this case was indeed Kenneth Oliver, the defendant.

If any citation to authority is needed, the Court referred to United States against Marshall, 427 F.2d 434 and also United States against Sheldor, 465 F.2d 361.

On considering all the evidence in this case, the Court finds the defendant guilty on all three counts beyond a reasonable doubt.

In this case, Mr. Oliver has been in custody for some time. I understand he will be returned to Michigan upon completion of the proceedings in this court.

Mr. Flanagan, do you think you could have a probation report here,

PROBATION OFFICER FLANAGAN:

We will make this the first case to work on.

THE COURT:

Let us try to do it in two weeks and if it cannot be done, we will put it off further.

PROBATION OFFICER FLANAGAN:

Will the defendant remain
here for that period?

THE COURT:

He will remain here.

PROBATION OFFICER FLANAGAN:

He will remain here.

THE COURT:

He will remain here until
the sentence and so we will
make the sentencing date
October 15th.

Mr. Burns and Mr. Doyle,
I have returned, - I have
asked Mr. Walsh, the clerk,
to return all of the exhibits
in this case to the attorneys:
the Government exhibits to you.
The stipulations are part of
the court record and we will
keep the original stipulations.

MR. BURNS:

Yes, your Honor.

THE COURT:

Thank you both.

MR. DOYLE:

Thank you, your Honor.

SENTENCING

October 25, 1974

Transcript p.132 line 20 through p.138 line 20

(132) THE COURT:

Certainly, this is a very tragic state of affairs. As you pointed out, Mr. Doyle, in your remarks, Mr. Oliver here, at one time, had excellent prospects. He had some advanced education. He had good employment.

(133)

He was making his way and he ran into a series of financial reverses, and it is tragic that he took the route he did. In the events here in this particular district involving the robbery of the M&T Bank on July 12th, 1972, we have had the trial and it seems to me that we have the decision in this case where I was convinced certainly beyond

a reasonable doubt of his guilt on all three counts charged in this particular indictment.

Without again going into detail on those particular facts that were brought out at the trial of the issue, the issues in that particular case, it seemed clear to conclude that the particular robbery was well planned; that Mr. Oliver, you had come up here to Buffalo a few days in advance; you had cased the bank, as they say. You had gone so far as to find out the identities and the first names and last names of the employees of the bank. You were well aware of the patterns of their conduct, how they came and went; where they lived. You used a weapon. Certainly, the people there were put in fear and they were justified to be

in fear by your activities
and a large sum of money was
taken, some \$40,000.

It was only through very
swift police work and the cooper-
ation of the people in the bank
and other civilians in the
neighborhood that the word got
out and the message got to the
FBI in your area in Detroit and
in a very short time that you
were apprehended quickly. Then
you were put on bail.

We here, and I think
that the Federal attitude toward
bail is the correct one and we
will certainly carry out, - Congress,
through expression in the Criminal
Justice Act, I believe, expresses
the best kind of attitude and
that is a man is innocent until
proven guilty beyond a reasonable
doubt, so based upon that
direction of Congress and the
facts and circumstances, the

(135)

magistrate directed that you be permitted to go on bail and the amount was posted and you were released on bail.

Following that event, this other robbery occurred in Michigan where, as Mr. Doyle has characterized it, the tragic result of the shooting and the killing of the Michigan police officer happened and you have had the trial in the Michigan court where there the judge has found you guilty. I do not have the details and facts of that particular event before me here. That was not developed in the record, certainly, but I am justified in taking that into account here in determining what sentence should be imposed. It is not my intention here to reap vengeance here. I do not

(136)

think that that is the role of the Court. I certainly do not want to pile on any sentence here and I am going to pass, - to give you a concurrent sentence, but I do believe that whatever happens in Michigan, whether your appeal is successful or whether it is not, that keeping in mind all of the events here, that a serious attention was paid to the criminal conduct which you have willfully and in a very carefully planned manner, that you have participated in and therefore, the sentence of the Court on Count One is that you are sentenced to the custody of the Attorney General for a period of fifteen years.

On Count 2, you are sentenced to the custody of the Attorney General for a period of ten years and on Count 3, to the custody of the Attorney General for a period of fifteen years.

These sentences are to run currently on each count, one with another, and it is the explicit direction of the Court, which will be sent forthwith to the Michigan authorities that this sentence, my sentence shall be concurrent with any Michigan sentence and it is the expressed directly of the Court that in no way shall that interfere with any parole consideration or any other consideration to be given under the law of Michigan to you there. I want this to be truly a concurrent

(137)

sentence.

On the other hand, if there should be any reversal of your conviction in Michigan, it is the intention of the Court, certainly, that you serve this particular sentence under the rules as set forth by the Federal Bureau of Prisons and the Federal Board of Parole.

I should inform you that you were convicted after trial. You have the right to appeal. If you desire to file a notice of appeal, I will have Mr. Walsh file that immediately. It must be filed, however, within ten days. If you do not have the funds to hire a lawyer on appeal, you may make application to the Court and the Court will assign a lawyer to represent you.

(138)

Mr. Doyle, under the rules of the Second Circuit, you must remain as attorney for Mr. Oliver until relieved by, or further appointed, if that is the case, by the Court of Appeals for the Second Circuit.

MR. DOYLE:

Yes, sir.

THE COURT:

Mr. Walsh has some forms which I would appreciate it if you would meet with him and execute.

MR. DOYLE:

Yes. In connection with that, we do ask that the Court instruct Mr. Walsh to file a notice of appeal.

THE COURT:

Mr. Walsh, file the notice of appeal.

MR. BURNS:

Your Honor.

THE COURT:

Yes.

MR. BURNS:

The defendant in this case was convicted on a superseding indictment, Criminal 1973-269. The original indictment was 1972-281, which the Government moves to dismiss at this time.

THE COURT:

All right. 1972-281 is
dismissed.

MR. BURNS:

Thank you, your Honor.

THE COURT:

Thank you.

JUDGMENT AND COMMITMENT

Filed October 30, 1974

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

KENNETH EUGENE OLIVER

:

:

:

Indictment No:

Cr-1973-269

On this 25th day of October, 1974, came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant upon a finding of guilty on September 26, 1974 has been convicted of the offense of willfully, by force, violence and intimidation, taking from an employee and others money belonging to an FDIC insured bank (Ct. 1), in violation of Section 2113(a), Title 18, USC; taking and carrying away with intent to steal and purloin, certain money belonging to an FDIC insured bank (Ct. 2), in violation of Section 2113(b), Title 18, USC; assaulting an employee by means and use of a dangerous weapon while committing the aforesaid offense (Ct. 3) in violation of Section 2113(d), Title 18, USC, as charged and the court having asked the defendant whether he has anything to say why judgment should not be

pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Fifteen (15) Years on Count One; Ten (10) Years on Count Two; and Fifteen (15) Years on Count Three, all sentences to be concurrent one count with another, and with the sentence being served in the State of Michigan.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

John T. Curtin

JOHN T. CURTIN United States District Judge

John K. Adams

JOHN K. ADAMS Clerk.

Telephone
616-695-5441

James K. Jesse
Attorney

P.O. Box 147
109 Red Bud Trail North
Buchanan, Michigan 49107

January 17, 1973

United States Attorney
Western District of Michigan
Federal Building
Grand Rapids, MI 49502

ATTENTION: FRANK S. SPIES, ASSISTANT U.S. ATTORNEY

RE: United States vs. Kenneth Eugene Oliver

Dear Mr. Spies:

I am writing in regard to the above entitled matter. At this time, it is the understanding of my client that he wishes to go to trial immediately in regard to his being charged with a bank robbery in Buffalo, New York. It is my understanding that originally he was going to be tried in Detroit. I would feel that this would be a satisfactory arrangement.

At this time, my client is demanding all of his constitutional rights to a speedy trial. In your letter of December 13, 1972, you indicated, and I quote from that letter as follows, "We are informed by the United States Attorney's Office for the Western District of New York that if Mr. Oliver wishes to contest the Buffalo, New York, charges, trial must be held promptly and he will probably be taken to Buffalo for trial within the next month or so."

Enclosed you will find my client's Financial Affidavit in regard to appointed counsel. Please advise me at the earliest possible time of when the trial date is going to be.

In addition, it is my feeling Mr. Oliver is entitled to all of his rights to a speedy trial. The failure to bring indictments against him in regard to the murderarmed robbery charge in Michigan I feel violates his constitutional rights. It is my contention that all his rights to a speedy trial are being denied by the fact that to date no formal action has been taken against him. It would appear to me that there will be no prosecution in regard to the Michigan charges, according to the actions so far from your office. If there are going to be charges,

I would think it would be necessary to file them so that this man does not lose his rights to a speedy trial.

Please advise me at the earliest possible time of the Federal government's position in regard to these matters.

Yours very truly,

James K. Jesse
Attorney at Law

JKJ:jkg

enclosure

IN CHAMBERS CONFERENCE

September 10, 1974, 11:25 a.m.,

Transcript p.6 line 1 through p.19 line 12

(6) THE COURT:

This is the case of the United States against Oliver, and, Mr. Doyle, as I understand, you have a motion to make.

MR. DOYLE:

That is correct, your Honor, really renewing a motion that has already been made, but I ask the Court to reconsider. This is Criminal 1973-269, United States of America vs. Kenneth Oliver. Your Honor, on approximately August 14, 1973 my predecessor who was assigned counsel for Kenneth Oliver, one David Jay, made what is euphemistically referred to as an omnibus motion before Judge Henderson that requested various forms of relief. One of those forms of relief was set forth in Paragraph 7 of his moving papers, wherein he requested dismissal of the

(7)

indictment for failure to act promptly denying the defendant a speedy trial. I want to renew that motion for a speedy trial. I point out that the criminal action is alleged to have taken place on July 12, 1972. Mr. Oliver was indicted for this particular act on December 5, 1972 for the first time. That indictment was 1972-281. It did set forth, as far as I am able to discern, the identical criminal transaction, namely, robbery of the M&T at 2101 Elmwood Avenue. Thereafter on July 9th, - excuse me, I want to take that back, - on July 25, 1973, another grand jury returned a superceding indictment alleging again the identical criminal transaction, the identical violation of the law. The only difference was apparently the second indictment recited that the victim was the manager of the branch office, one Donald E. Warren, as contrasted to one of the

(8)

employees who had been set out as the employee prior to that, one Lynn Otterman, but prior to that the criminal transaction was the same, so as I indicated, approximately August 14th of 1973 Mr. Jay made a different motion in that regard claiming more than a year ago that the defendant had been denied a speedy trial and the Government responded. The Government set forth a lengthy affidavit in which they attempted to explain away part of the time involved here pursuant to Rule 5, as I understand, of the system that was adopted by this District Court for the disposition of criminal cases, but in any event, more than a year has transpired since that Government answer back in August of 1973, and of course, we are now dealing with

September 10, 1974, a full year later. The defendant has not been brought to trial and he is only now faced with the prospect of picking a jury, so calling to the Court's attention this was a criminal transaction that supposedly took place on July 12, 1972, the first indictment returned December 5, 1972, a superceding indictment July 25, 1973; motions made returnable thereafter, immediately, motions directed, - October 9, 1973 is when the hearings on these motions were held, these suppression hearings.

(9)

My first appearance in this matter was June 1, 1974. The motions were subsequently denied on July 10, 1974 and we are now faced with certainly all of the delays that were cited in Mr. Jay's application, plus a full additional year and some number of days in which the defendant has been awaiting trial and has been

incarcerated during that period of time, so pursuant to Rule 50 and Rule 5 of this District, I now move for dismissal of these charges upon failure of the Government to provide the incarcerated defendant with a speedy and prompt trial.

THE COURT:

Mr. Burns.

MR. BURNS:

Your Honor, the motion Mr. Doyle refers to made by Mr. Jay to dismiss the indictment back in August of 1973 was responded to by the Government on August 31, 1973, a lengthy affidavit of my own together with affidavits of three other assistant United States Attorneys and a prosecuting attorney from Michigan who was preparing his case at that time against the defendant also. The matter was returnable before Judge Henderson, I believe the very first week in

(10)

September of 1973. At that time in open court Mr. Jay withdrew the motion prior to any ruling thereon by the Court. Mr. Jay then said he was satisfied with the Government's response and believed at that point his motion had no merit. On that return date before Judge Henderson, the Government again reiterated it remained ready to try Mr. Oliver in this District on Criminal 1973-269. Mr. Jay also made motion for a suppression hearing. It was eventually heard before Judge Henderson and decision rendered by this Court, as Mr. Doyle pointed out, July 10, 1974.

Surely under the plan for the prompt disposition of criminal cases that period is excludable under a sub-paragraph. Rule 5 in Paragraph 51 states any period of time during which motions are pending or decisions pending is properly

(11)

excludable from the period in which the Government must be ready to try the defendant. Motion being made August 14, 1973 and the ruling July 10, 1974, the Government should not be held accountable for that time. In addition, the records of the Court will indicate that the Government on a number of occasions after the suppression hearing indicated readiness for trial and kept Mr. Oliver here in Erie County Jail on a writ ad prosequendam. He is held not on our charges but pursuant to a term of imprisonment in the State Court of Michigan. He has never applied for setting of bail on any charges in this District, albeit meaningless the motion might be, so under the circumstances I feel the Government has met its burden. Due to the circumstances of the lack of judicial manpower I believe the defendant has not had a speedy trial and has not been able to have the

issue resolved until this time and again I believe the Government has met its burden and communicated that to the defendant.

THE COURT:

Mr. Burns, I was not familiar at all with this case until February of 1974 when Judge Henderson died. At that time I took on the Bufalino case, which is complicated and a long trial which lasted from February of 1974 until the latter part of April 1974. Mr. Doyle, correct me if I am wrong, sometime around then it was called to my attention this case, - since it was a jail case, - I had communication with your office and Mr. Jay about getting a trial on of this case because Mr. Oliver was in jail and at or about that time he indicated to Mr. Jay that he desired to make some other arrangement for counsel and he was brought over here to the court a couple of times so

(12)

we could have meetings about this problem and finally Mr. Doyle, you came into the case in early June.

MR. DOYLE:

That is right. Mr. Jay, as I understand the court record indicates was relieved on June 1, 1974 and I appeared for him at that time.

THE COURT:

At that time a summary request was made for you so you could look at the documents and the papers.

MR. DOYLE:

That is correct.

THE COURT:

That was done and the Court made a decision.

(13) MR. DOYLE:

July 10, 1974 you rendered a decision on the suppression motions.

THE COURT:

And at or about that time, maybe the 15th of July, the Court began a trial in the case of United States against Purks, which lasted about three and a half weeks and following that was away from the Court on vacation the latter part of August.

MR. DOYLE:

True.

THE COURT:

This matter, - we had the judicial conference last week and this matter was set at the earliest time possible that I could see, since at least I was involved in that particular lawsuit. Mr. Burns, I am not at all familiar and it seems to me that some period of time passed from the time of the original indictment in December of 1972 until the date of the first proceedings which were held in August of 1973. Can you explain to the Court what occurred after the commission of this crime and why there was delay in bringing the indictment and after indictment what caused delay in the early part of 1973.

(14)

MR. DOYLE:

May I point out one additional thing by my understanding, from the, - so we are clear on this, this crime was alleged to have taken place on

July 12th of 1972. Then we have the statements and arrest, et cetera, of Mr. Oliver which occurred the next day, July 13th.

THE COURT:

The arrest occurred in July of 1972 and what happened after that?

MR. BURNS:

Let me preface these remarks by saying that the motion that was renewed this morning, I just became aware of it this morning, and let me as best I can without having a substantial amount of time to cover those points, my affidavit in July of 1973 set forth the theory of the Government for the delay from July 13th of 1972 to October 12th of 1972 should be excludable from the time in which the Government must be ready for trial. During that period of time Mr. Oliver was negotiating with the United States Attorney in Michigan for a reduced plea. He indicated a willingness to plead guilty

(15)

under the provisions of Rule 20. During that period of time he asked a number of times for adjournments for the purpose of cooperating with the local prosecutors and to provide information there regarding some criminal activities in the Detroit area. He thought he could possibly help himself, so I am told by the prosecutors out there. He repeatedly asked for adjournment of the matter. There are letters in my file setting forth those requests. That takes it to October 12th of 1972. On that day the defendant was involved in a bank robbery in Michigan and also ultimately was charged with the murder of a Michigan State Trooper. He was arrested the next day, October 13, 1972. He was continuously in the custody of the Michigan authorities from October 13, 1972 until June 25, 1973. During that period of time the defendant himself

(16) .

made a number of motions attacking the indictment requesting hearings, requesting examination as to competency, change of counsel in that case out in Michigan likewise. During that period of time on several occasions the United States Attorney communicated to the local prosecutors in Michigan its desire to try Mr. Oliver in this district on the bank robbery charges. The prosecutor in Michigan asked us to defer prosecution until such time as the charges against Mr. Oliver in Michigan were disposed of. We did so and I submit that period is excludable under Rule 5(a) of the Plan and also 5(f) of the Plan since the defendant was in custody in another jurisdiction. The United States Attorney was diligent in trying to bring him here but unable to because of pending proceedings in another district, so for that

(17)

reason I think the period until June 25, 1963, the date of his sentencing in Michigan should be excluded from the six-month rule. The next period from June 26, 1973 through July 29, 1973, the defendant was indicted in criminal, - no, strike that. There was already pending an indictment against him dated sometime in December of 1972. In July of 1973 the United States Attorney petitioned this Court for a subpoena ad prosequendam to bring him back on the original indictment. He was produced on July 26, 1973 and arraigned on July 30, 1973 on the superceding indictment. I think that period of time from July 11, through July 30th is also excludable. The United States Attorney made every effort to bring him here expeditiously

for arraignment. Then from July 30th to August 13th 1973 there was some question of who would represent the defendant and that was excludable, at the request of the defendant, August 13th, 1973 to September 4th of 1973; the defendant's attorney made motions, some of which were pending until July of 1974. I think the record, although I am unable to point to specific dates because I don't have the transcript or the docket before me, but the Government did indicate to the defendant and his both attorneys its readiness to try the case and its willingness to bring it along as soon as possible. For these reasons the Government submits it has met its burden.

(18)

THE COURT:

Mr. Doyle.

MR. DOYLE:

The difficulty is there are a number of non sequiturs in the Government's argument. I don't

understand how a defendant arrested on July 13th, a full confession, and the fact he is later arrested in Michigan in October on a totally different matter justifies nonpresentment of this particular matter pursuant to Rule 48 of the Criminal Rules, justifies that delay of some five and a half months. I don't understand. They say in October he got arrested on something else and for the period from July 13th until December when this matter was presented to the grand jury as excludable, why is it pre-supposed the defendant was going to testify in front of the grand jury?

MR. BURNS:

It was in the record. The defendant requested it. He wanted an opportunity to show he could assist in other law enforcement

(19)

THE COURT:

activities and to then benefit from it.

I have considered all your motions and they are denied. When we go into court you know my practice is to ask any questions lawyers might ask under the circumstances. If you have any particular questions you think I ought to put, please write them out and I will consider them and put them. If there is any particular line of inquiry which you feel ought to be gone into, if you will let me know about it I will also cover that.

SUPPRESSION HEARING

October 9, 1973

Transcript p.6 line 2 through p.7 line 20

The license plate number is
LGX-642. We ran that in the
computer -- I did -- and it came
back to Linda Oliver at 1042 Stafford
Place, Detroit, Michigan.

BY MR. BURNS:

Q. Did the information from the computer indicate that
the car belonged to Linda Oliver?

A. Yes, it did.

Q. Now --

THE COURT: Let me ask you this. Did Hawley
give you that license number?

THE WITNESS: That is correct.

THE COURT: Of a Michigan plate?

THE WITNESS: Yes, sir.

THE COURT: Did he ask you to confirm who owned
it?

THE WITNESS: That is correct.

THE COURT: And that is what your result was?

THE WITNESS:

That is correct.

BY MR. BURNS:

Q. Mr. Farley, with that information, what did you do?

A. I ran a record check on Linda Oliver, and it came up negative. About a half hour or forty-five minutes later I received a teletype from Buffalo which told me that the Manufacturers & Traders Trust Company -- I don't know the exact address -- North Englewood Office in Buffalo, New York had been robbed by a male negro, approximately six feet tall, weighing two hundred thirty-five to two hundred and forty pounds. With that information -- in addition, the teletype that I received stated that there was a vehicle, which was described as a black over gray Camero, seen in the vicinity of the bank prior to the robbery, that is, not the same day as the robbery, but on the day prior to the robbery, by someone, and that a similar vehicle had been seen on the day of the robbery.

Q. With this information, and after having run the license plate number through your machine, what did you proceed to do in your investigation?

A. I did a number of spot checks at 1042 Stafford Place, looking for that vehicle.

Q. What day was this?

A. That was on the 12th.

Q. July 1972?

A. July 1972.

Transcript p. 15 line 1 through 27

I placed him under arrest, Agent Bonney advised him of his rights.

Q. Were you present when Agent Bonney advised him of his rights?

A. Yes, I was.

Q. Do you know what Agent Bonney said to him?

A. He advised him he had the right to remain silent -- you mean the rights exactly?

Q. As you recall, what Agent Bonney said to him.

A. Agent Bonney told him he was under arrest for the robbery that took place in Buffalo on July 12th.

THE COURT: Was this upstairs?

THE WITNESS: Yes, sir, it was in his bedroom, immediately after I placed him under arrest.

THE COURT: Did he have a chance to sit down or how did you do that?

THE WITNESS: We moved him from the front doorway to the bed, about three or four feet, and sat him on the end of the bed.

THE COURT: Did you have your guns drawn?

THE WITNESS: Yes, we did.

THE COURT:

What happened to this automatic,
if you know, which you heard
being cocked, was that in evidence
or not?

THE WITNESS:

We didn't see it then. We did find
it a few minutes later in the closet
of the room.

Transcript p.17 line 2 through p. 18 line 26

Q. Was this before or after you advised him of his rights?

A. This is -- now, let me get the timing straight. When we told him that he was under arrest for the robbery of the M & T Bank he said, "I don't know why you are here." Bonney orally advised him of his rights. When he finished advising him of his rights, Bonney said, "Do you understand that?" He said, "I understand what you are talking about." Then we asked him where the money was and different items. He said, "Well, I guess that's it."

Q. Now, what size room was this, do you recall?

A. It's about twelve by thirteen, twelve by fourteen.

THE COURT: Wait a minute. Before he said, "I guess that's it," Bonney made a recital --

THE WITNESS: Yes, sir.

THE COURT: -- as to what you refer to as rights. These rights mean nothing, as a term. What did Bonney say to him?

THE WITNESS: He said, "I'm going to advise you of your rights. Number one, you have the right to remain silent. Number two,

anything you say can be held against you in court. You have the right to have an attorney present during any questioning now or in the future. If you cannot afford an attorney, one will be appointed for you by the court, if you wish one," and he said he understood that. Mr. Oliver responded in the affirmative, that he did understand that.

THE COURT:

Then you recited to him, as I understand it, but you correct me, what you found, is that right?

THE WITNESS:

That is correct.

THE COURT:

And then to what your recital was, he responded with the words, "I guess that's it." Do I have it accurate or not?

THE WITNESS:

That is correct. Now, when I advised him -- when Bonney advised him, I'm sorry, of his rights, he said, "I don't know why you are here." Now, in response to that I said, "I found the money in the glove compartment downstairs," and Agent Bonney told

him, "They got your license plates
on your car in Buffalo, the license
plate on the car that is downstairs
in Buffalo." Then he said, "I guess
that's it."

Transcript p.36 line 9 through p.40 line 17

BY MR. JAY:

Q. All right. Did you, on the 13th, prior to going out to this premises make any contact with the United States Attorney?

A. No, I did not.

Q. Did you have any further conversations by telephone with the Buffalo office?

A. No.

Q. You had the one phone call?

A. And the teletype.

Q. You call back to them as to yes, it checks out, this particular plate?

A. That is correct.

Q. And then the teletype with further identification?

A. The same identification.

Q. Did you do any checks with the marriage bureau of the State of Michigan --

A. No.

Q. -- as to Linda Oliver having been married to anyone?

A. As to --?

Q. As to Linda Oliver having been married to any person?

A. No, I did not.

Q. This premises is within the City of Detroit, is it?

A. Yes, it is.

Q. Were the City of Detroit police put on notice of this particular happening?

A. No, they were not.

Q. When you proceeded on the morning of the 13th there were the six agents, yourself included?

A. Correct.

Q. You arrived at what time, sir?

A. Around eight o'clock.

Q. Eight a.m.?

A. Correct.

Q. Now, Mrs. Oliver -- as you approached the house -- well, let's strike that. Did you approach the house in the same manner that you had the three or four previous times the day before?

A. I pulled the vehicle up to the front door of the house.

Q. All right, okay. This you had not done before, you had remained --

A. Away.

Q. -- covert?

A. I remained in the street and walked through the complex. You can call it covert if you want

- Q. You were as unobtrusive as you could be the times before, right?
- A. Right.
- Q. At this time you parked right in front of the house?
- A. Right.
- Q. How many cars?
- A. One car pulled into the front of the house. That was the car I was in.
- Q. Where did the others go, where were they detailed to go?
- A. I had one stay at the -- it is kind of an alcove you pull in, there is one exit from that area. I had one car stay there. I had another car pull up to the other side of the house where they could see who was entering or leaving through the back door, the side that had the porch?
- Q. It is your testimony that you had no further information from any source as to such a vehicle arriving at that premises from the time you had last spot checked it until that time, eight o'clock in the morning?
- A. That is correct.
- Q. You were at this point changing your tack, you were going to make a contact at this point with that premises?

A. My thinking at the time was that the car couldn't have gotten back in time from this area.

THE COURT: You mean from Buffalo?

THE WITNESS: I'm sorry. From Buffalo to Detroit.

BY MR. JAY:

Q. At least at this point it would be --

THE COURT: Wait a minute. Let him finish his answer.

THE WITNESS: Thank you.

THE COURT: You thought --

THE WITNESS: I felt that the car wouldn't have gotten back to Detroit from Buffalo at the earlier times, now this is the night before. I felt that at eight o'clock or seven o'clock the next morning that he would have had ample time to get back and probably we would catch him in bed.

BY MR. JAY:

Q. If, in fact, whoever it was was proceeding to this address. You didn't know at that point that the plates may have been stolen?

A. That is correct.

Q. But you were approaching the premises at this point, at least, with this suspect, this man who was perhaps coming back from Buffalo, you had somebody in mind at this point?

A. Yes, we did.

Q. You had a description?

A. We did.

Q. And, of course, you didn't make any application to any court for a warrant of arrest or a search warrant, correct?

A. No, we didn't.

Q. All right. Now, as you approached the home, that is, yourself, were you with another agent or were you alone?

A. I was with Agent Bonney.

Q. And you approached the front door, is that correct?

A. That is correct.

Q. And was anyone in the house stirring at that time or were they up?

A. Well, we found Linda Oliver was up at the time.

Q. What first contact did you have with Linda Oliver?

A. She opened the front door of the house.

Q. How did you notify her or the occupants of the house that you were there?

A. I took out my credentials and exhibited them to her.

Transcript p.44 lines 2 through 8

Q. She came out to the garage?

A. I didn't know where the garage was. She took me into the garage.

Q. Did you come out of the house and go to the garage door or through the house?

A. You can walk right through into the garage from the house.

Transcript p.48 line 6 through p.51 line 25

THE COURT:

Look, they had a tip from Buffalo, to which I assume there will be testimony, of a Camero of a certain description, bearing a license plate. With all deliberate speed, since it was an Ohio plate, I would assume that the FBI in Ohio was alerted, and they asked in whose name is that car registered, and it happened to be the defendant's wife, at a certain address.

MR. JAY:

That is right.

THE COURT:

They went there as quickly as they could, hoping to observe him. Instead of observing him coming, they found a home, and they went in there and asked the woman, 'Who are you?' She says, 'I'm a white woman married to a black man.' 'Could I see your car?'

'What kind is it?' She said, 'It's a black Camero -- or whatever it is -- with license plates, we have nothing to hide.' So they go in there and find money pouring out of the glove compartment, and then they -- the sequence isn't so important -- 'Are you sure your husband isn't home now?' And let's call it a quirk, they have the impression that he is. They go up with loaded revolvers, three of them, and they hear on the way up the normal mechanical operation of an automatic pistol, which I think anyone knows who has been anywhere, being cocked, and then they call upon this man to come out because of his child being in the abutting room, and in one manner or another he comes out, and in short order they find a Mauser, fully cocked, in between a couple of books, as I understand it, and then they talked to him, and they gave him --

I missed the phrase -- they told him the things that Miranda requires, and then he told them, 'Yes, I was there,' and he shows them further loot, and they asked him, 'Is that the Mauser -- or whatever it was, a Luger -- that was used in that robbery?' He said, 'No, it was a .45,' and he tells them where it is. They find it in the garage, not loaded. But there it is, what else is there to the story?

MR. JAY:

Your Honor, it is my impression that the testimony that this agent would like the Court to believe is that they went there and the furthest thing from their minds was that someone would be there linked to this robbery, and that is absurd.

THE COURT:

What is absurd about a report that a car, bearing plates like that, with a colored man, who caused the robbery, disappeared with a bunch of loot and is back home?

MR. JAY:

That is what I am saying, your Honor. I am saying it was the most logical thing in the world that if this information they had was correct, that is, if a Camero bearing such and such plates, registered to Linda Oliver, whose address they found, was at that place, and this man was there, they would go in there loaded for bear, they are ready to arrest him, why didn't they have a search warrant and arrest warrant? He is telling me they went there and they didn't really think he would be there, that is silly.

THE WITNESS:

Counsel, when I saw Linda Oliver --

THE COURT:

Wait a minute. I make these decisions, okay?

THE WITNESS:

Okay.

THE COURT:

Ask further questions, if you wish.

MR. JAY:

Yes, sir.

BY MR. JAY:

Q. Now, when you finally got in Mr. Oliver's presence, as you told us, I believe he was in his underwear, is that correct?

A. That is right, he was.

Q. And this bed that you spoke of that he sat on the corner, was it rumpled, was it a madeup bed?

A. Yes.

Q. Did it appear that somebody had been sleeping in it?

A. Yes, it did.

Q. And you cuffed him, correct?

A. Correct.

Q. The first thing you did?

A. Correct.

Q. Cuffed him with his hands before him or behind him?

A. Behind him.

Transcript p.78 line 3 through p.80 line 25

Q. All right. Then let's take it time-wise, would you say that it was 8:15 A.M. after you had seen the car, checked the plates, talked to her, and verified the description, and you knew the name of the man that you were now looking for, as well as his description, and had verified it, right, about 8:15?

A. It's kind of tough to put a specific time on it. If we are going to say we arrived at eight, I suppose we spent ten or fifteen minutes in that process.

Q. Preliminaries before you went upstairs?

A. Correct.

Q. It would have been available to you then to proceed or to send one of the men or call downtown and have someone procure a warrant for the arrest of Mr. Oliver?

A. When we have an indication that there is a man in the house, that is not the proper thing to do.

Q. I understand that. At that point you had no indication that there was a man in the house, did you?

A. As soon as we came back from the garage Mrs. Oliver was visibly shaken.

Q. Visibly shaken then, sir?

A. Yes, she was.

Q. Is this after you had searched the car and found the money in there or before?

A. Okay, do you want me to go through it for you?

Q. Sure.

A. Again, we went and contacted Mrs. Oliver, asked her about the car. We went in and verified that the car was indeed the one we were looking for, came back and told her we wanted a search warrant for the car.

Q. Was she visibly shaken now?

A. She was nervous.

Q. She was nervous then, okay. So what did you do?

A. (No response.)

Q. You sat down and you wrote out Exhibit 1 --

A. Yes we did.

Q. -- calmly, and sat there in the kitchen and wrote that document out, how long did it take you to do that?

A. Probably five minutes.

Q. And she was visibly shaken, right?

A. She was nervous, yes.

Q. All right. There were a bunch of FBI agents all over the place, right?

A. I didn't say she didn't have a reason to be nervous, I said she was nervous.

Q. All right. In any event, you had her execute that document?

A. Yes, we did.

Q. You did not search prior to that, is that right?

A. Search the car?

Q. Search the car, search anything?

A. That is right.

Q. So rather than sit down and write out this nice little document, you could have called downtown and had someone procure a search warrant, could you not, nothing would have happened, would it?

A. If she had refused the consent search, that probably would have been the procedure. Since she willingly provided a consent search, there was no need for that.

Q. That is your conclusion, is it not, that she willingly provided this to you, right?

A. She willingly provided it. She stated she understood and she was willing for us to make a search, unequivocally, there was no hesitation.

Q. But she was very nervous?

A. Like you said, six FBI agents would make her nervous.

Q. It is your feeling, sir, that she was completely willing to give this consent search, even though you observed her being visibly shaken?

A. Absolutely.

Q. That is what the document says anyway, right, Exhibit 1?

A. That is what we have to go by.

Q. What we have to go by, I think, even more than the document is your recollection of what the situation was.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

vs.

Appellee,

AFFIDAVIT

No. 74-2412

KENNETH OLIVER

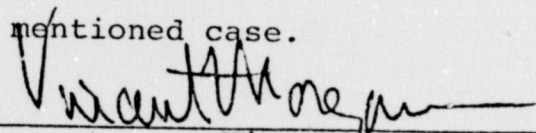
Appellant.

STATE OF NEW YORK)
COUNTY OF E R I E) ss:
CITY OF BUFFALO)

VINCENT MORGAN, being duly sworn deposes and
says:

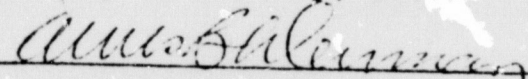
1. That he is over 18 years of age and a Law Clerk for the law firm of DOYLE & DENMAN.
2. That on January 2, 1974, he personally delivered to the United States Attorney's Office for the Western District of New York, a copy of the Brief and Appendix in case of United States of America vs. Kenneth Oliver in the United States Court of Appeals for the Second District No. 74-2412.
3. That such service was accomplished by personally delivering to Theodore J. Burns, the Assistant United States Attorney in charge of the above mentioned case.

DOYLE & DENMAN
ATTORNEYS AT LAW



Vincent Morgan

Sworn to before me this
2nd day of January, 1974



JAMES B. DENMAN
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1975

2